

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CURRY

ANTHONY HUBBARD,)	Case No. 23CV52269
)	
Plaintiff,)	COMPLAINT
)	
v.)	JURY TRIAL DEMANDED
)	
THE PORT OF BROOKINGS-HARBOR,)	Total Relief Requested \$100,000
)	
Defendant.)	Court Reporting Requested
)	Not Subject to Mandatory Arbitration

Plaintiff, Anthony Hubbard, by and through his Attorney, Nathan Garcia, for his
Complaint against the Port of Brookings-Harbor (referred to herein as the “Port”), in common
with all claims herein alleges:

1.

At all material times herein referenced, Plaintiff was an individual with a qualifying
disability as defined under the Americans with Disabilities Act of 1990, 42 U.S.C. §12010 et.
seq., as amended in 2008, residing in Curry County, Oregon.

2.

The Port is a public governmental entity located in Curry County, Oregon.

3.

The conduct at issue in this matter occurred in Curry County, Oregon.

4.

Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com

1 A tort claim notice letter was sent to the Port within the statutory period allowed under
2 ORS 30.275.

3 5.

4 The Port owns and operates docks where they provide public access to the general public
5 for purposes including fishing and crabbing.

6 6.

7 The Port has a dock (referred to herein as the “New Dock”) that was installed behind
8 Zola’s Pizza, upon information and belief, with the assistance a grant from the United States
9 Army Corps of Engineers, in part to allow people with disabilities greater access to the Port’s
10 public facilities, specifically a readily accessible dock for fishing and crabbing.

11 7.

12 Plaintiff is a member of the general public and a person with a disability who frequented
13 the New Dock at the Port.

14 8.

15 The New Dock is accessible from a dirt road that is behind Zola’s Pizza and previously
16 there were no obstructions blocking the dirt road that accesses the New Dock and Plaintiff was
17 able to drive his vehicle directly to the New Dock.

18 9.

19 On or about May 20, 2022, the Port installed a metal gate obstructing vehicular access to
20 the New Dock, but allowed an opening for individuals to walk from a small concrete parking lot
21 to the New Dock along a gravel road.

22 10.

1 Plaintiff is unable to walk to the New Dock due to walking restrictions, as he is missing
2 half of his leg and has a prosthetic leg and suffers from pain, including phantom pain in the part
3 of his leg that is missing if he walks too far.

4 11.

5 Plaintiff arrived at the entrance to the New Dock on July 23, 2023 with his minor son,
6 intending to go fishing and found that the access road to the New Dock was locked by the gate
7 that the Port had installed.

8 12.

9 Plaintiff was assisted by two Oregon Fish and Game Wildlife officers in contacting the
10 Port so that an employee could come and open the gate to provide him with access.

11 13.

12 When the Port employee arrived, he would not open the gate to provide Plaintiff with
13 access and informed Plaintiff that the Port was having issues with the homeless population
14 camping down at the New Dock so they had decided to erect the gate blocking the access road,
15 and further informed Plaintiff that he could walk around to gate to access the New Dock.

16 14.

17 Plaintiff explained to the Port employee about his disability and inability to walk that far
18 safely without risking substantial pain to his leg, but was still refused access through the gate.

19 15.

20 Plaintiff contacted the Port through counsel about the issue of lack of access to the New
21 Dock for people with disabilities, and as an end result of the communication, the Port informed
22 Plaintiff that they intend to expedite their plans to remove the New Dock entirely.

23 16.

24
25
26
Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com

1 Title II Subpart B of the Americans With Disabilities Act, CFR 28 § 35.130 (a)
2 mandates:

3 “No qualified individual with a disability shall, on the basis of disability, be excluded
4 from participation in or be denied the benefits of the services, programs, or activities
5 of a public entity, or be subjected to discrimination by any public entity.”
6

7 17.

8 Title II Subpart B of the Americans With Disabilities Act, CFR 28 § 35.133 (a)
9 mandates:

10 “A public entity shall maintain in operable working condition those features of facilities
11 and equipment that are required to be readily accessible to and usable by persons with
12 disabilities by the Act or this part.”
13

14 18.

15 Plaintiff suffered damages from being denied access to the New Dock, including the
16 ongoing loss of the ability to crab and fish at the New Dock since July 23, 2023, as the gate
17 blocking handicap entrance remains in place to the current day, and including feeling
18 humiliation, belittled, loss of enjoyment of life, discriminated against due to his disability, and
19 attorney fees as authorized by ADA Title II Subpart F, CFR 28 § 35.175.

20 FIRST CLAIM FOR RELIEF

21 [Violation of Title II Subpart B of the Americans With Disabilities Act, CFR 28 § 35.130 (a)]

22 19.

23 Plaintiff incorporates by reference herein the allegations contained in paragraphs 1
24 through 18 above.
25

26
Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com

20.

On July 23, 2023 through present, the Port has excluded Plaintiff, an individual with a qualified disability from participation and benefits of the services, programs, and/or activities of the Port, a public entity, by denying him handicap access to the New Dock.

21.

As a direct the Port's exclusion of Plaintiff from participation and benefits of the services programs, and/or activities of the Port: (1) Plaintiff has suffered economic damages in the amount not exceeding \$2,000.00 in the inability to fish and crab at the New Dock; and (2) Plaintiff has suffered non-economic damages in an amount not exceeding \$98,000.00 in humiliation, belittlement, loss of enjoyment of life, feeling and being discriminated against, and has incurred attorney fees.

SECOND CLAIM FOR RELIEF

[Violation of Title II Subpart B of the Americans With Disabilities Act, CFR 28 § 35.130 (a)]

22.

Plaintiff incorporates by reference herein the allegations contained in paragraphs 1 through 21 above.

23.

On July 23, 2023 through present, the Port has discriminated against Plaintiff, an individual with a qualified disability.

24.

As a direct result of the Port's discrimination, (1) Plaintiff has suffered economic damages in the amount not exceeding \$2,000.00 in the inability to fish and crab at the New Dock; and (2) Plaintiff has suffered non-economic damages in an amount not exceeding

Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com

1 \$98,000.00 in humiliation, belittlement, loss of enjoyment of life, feeling and being
2 discriminated against, and has incurred attorney fees.

3 **THIRD CLAIM FOR RELIEF**

4 [Violation of Title II Subpart B of the Americans With Disabilities Act, CFR 28 § 35.133 (a)]

5
6 25.

7 From July 23, 2023 through present, the Port has failed to maintain in operable working
8 condition those features of facilities and equipment that are required to be readily accessible to
9 and usable by persons with qualifying disabilities under the Americans with Disabilities Act.

10 26.

11 As a direct result of the Port's failure to maintain in operable working condition those
12 features of facilities and equipment that are required to be readily accessible to and usable by
13 persons with disabilities by the Americans with Disabilities Act, (1) Plaintiff has suffered
14 economic damages in the amount not exceeding \$2,000.00 in the inability to fish and crab at the
15 New Dock; and (2) Plaintiff has suffered non-economic damages in an amount not exceeding
16 \$98,000.00 in humiliation, belittlement, loss of enjoyment of life, feeling and being
17 discriminated against, and has incurred attorney fees.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff seeks judgment as follows:

20
21 1. In the alternative to Claims 2 and 3, awarding Plaintiff all compensatory damages,
22 including consequential damages, all pecuniary damages, and all general damages, including
23 non-pecuniary damages, including:

24 (a) humiliation, belittlement, loss of enjoyment of life, feeling and being discriminated
25 against as a result of the Port's violation of the Americans with Disabilities Act, in Plaintiff's
26

Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com

1 First Claim for Relief in the amount of \$100,000.00, or as determined at trial;

2 2. In the alternative to Claims 1 and 3, Awarding Plaintiff all compensatory
3 damages, including consequential damages, all pecuniary damages, and all general damages,
4 including non-pecuniary damages, including:

5 (a) humiliation, belittlement, loss of enjoyment of life, feeling and being discriminated
6 against as a result of the Port's violation of the Americans with Disabilities Act, in
7 Plaintiff's Second Claim for Relief in the amount of \$100,000.00, or as determined at
8 trial;

9 3. In the alternative to Claims 1 and 2, Awarding Plaintiff all compensatory
10 damages, including consequential damages, all pecuniary damages, and all general damages,
11 including non-pecuniary damages, including:

12 (a) humiliation, belittlement, loss of enjoyment of life, feeling and being discriminated
13 against as a result of the Port's violation of the Americans with Disabilities Act, in
14 Plaintiff's Third Claim for Relief in the amount of \$100,000.00, or as determined at trial;

15 4. Awarding Plaintiff a judgment for his attorney fees under the Americans with
16 Disabilities Act, Title II, including ADA Title II Subpart F, CFR 28 § 35.175.
17

18 Dated this 21st day of December, 2023.

19
20 /s/ Nathan L. Garcia
21 Nathan L. Garcia, OSB #103856
22 Attorney for Plaintiff
23 P.O. Box 2724
24 Brookings, OR 97415
25 (541) 247-1332
26 Nathan@nathangarcialaw.com

Nathan L Garcia, Attorney at Law PC
97829 Shopping Center Ave, PO Box 2724, Brookings, Oregon 97415
Telephone: (541) 247-1332
nathan@nathangarcialaw.com